

IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)	
)	
TOMMIE EUGENE MCILWAIN, SR.,)	
)	CASE NO. BK11-33009 (W.D.N.C.)
Debtor(s).)	
COMMISSION RECEIVABLES FUND 1,)	A12-8011-TJM
LLC, a Nebraska limited liability company,)	
)	8:11CV131
Plaintiff(s),)	
)	
vs.)	CHAPTER 7
)	
TOMMIE E. MCILWAIN, SR., and SENIORS)	
CHOICE INSURANCE GROUP, INC.,)	
)	
Defendant(s).)	

REPORT & RECOMMENDATION

This matter is before the court on the plaintiff's status report (Fil. #3).

The plaintiff, a Nebraska company, sued the defendants, both of North Carolina, in the District Court of Douglas County, Nebraska, in October 2010 for breach of contract concerning a purchase agreement for future renewal commissions on certain insurance policies. The defendants removed the case to the federal district court in Nebraska in April 2011. The defendant Tommie McIlwain filed a Chapter 7 bankruptcy case in November 2011, which caused the case to be referred to this court.

The automatic stay of 11 U.S.C. § 362 protects the debtor from any attempts to collect a debt from him, but the non-debtor defendant is not subject to the same protection. Therefore, I respectfully recommend to the United States District Court for the District of Nebraska that it withdraw the reference of this adversary proceeding to proceed with the litigation against Seniors Choice Insurance Group, Inc., while staying the case as to the party in bankruptcy until the automatic stay is no longer in effect or until relief from the automatic stay is requested and obtained from the bankruptcy court.

The Clerk of the Bankruptcy Court shall process this recommendation pursuant to the local court rules.

DATED: March 22, 2012

RESPECTFULLY SUBMITTED,

/s/ Timothy J. Mahoney
 United States Bankruptcy Judge

Notice given by the Court to:
Patrick R. Guinan
Thomas M. Rowen
Tommie E. McIlwain, Sr.
U.S. Trustee